D.B. CIVIL SPECIAL APPEAL(W)NO.537/2007

The Senior Divisional Engineer(Legal), Bikaner
Vs.
Shri Gopal Dass & Anr.

Date of Judgment :: 13-08-2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI J.M. PANCHAL
HON'BLE SHRI JUSTICE BHANWAROO KHAN

Mr. Kuldeep Mathur, for the appellant.

PER HON'BLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL

The instant appeal is directed against the order dated February 9, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition no.4138/2004 by which the prayer made by the appellant to set aside the award dated July 30, 2003 rendered by the Central Government Industrial Tribunal cum Labour Court directing reinstatement of the respondent in service with 50% back wages, is rejected.

The respondent was appointed on June 17, 1993 to the post of Daily Wager which was sanctioned by the Central Government. His services were terminated on March 30, 1997. Therefore he raised dispute. The same was referred to Central Government Industrial Tribunal cum Labour Court, Jaipur for adjudication. The parties led evidence before the Tribunal. On appreciation of evidence, the Tribunal

held that there was breach of provisions of Section 25-F of the Industrial Disputes Act, 1947. Having regard to the facts of the case, the Tribunal granted reinstatement of the respondent in service with 50% back wages. Thereupon, the appellant invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition no.4138/2004. The learned Single Judge has dismissed the same by the judgment dated February 9, 2007 giving rise to the instant appeal.

This Court has heard Mr. Kuldeep Mathur, learned counsel for the appellant at length and considered the documents forming part of the petition.

The contention that the respondent was employed only on contractual basis who had worked only four hours a day and therefore reinstatement in service with 50% back wages should not have been ordered by the Tribunal is devoid of merits. On appreciation of evidence adduced by the parties, the Tribunal has recorded a specific finding of fact that respondent was employed on a post sanctioned and had continuously worked from June 17, 1993 to March 12, 1997. No evidence could be adduced by the appellant to establish its case that the respondent was appointed only on contractual basis and had worked only four hours a day. Under the

circumstances, the contention that the respondent had worked only for four hours a day and therefore was not entitled to relief of reinstatement in service, cannot be accepted.

The plea that the post of Gardener was abolished by order dated March 4, 1996 and therefore reinstatement is unjustified, has no substance. As observed by the Tribunal, no evidence was adduced by the appellant to indicate that the post of Gardener was abolished w.e.f. March 4, 1996.

It may be mentioned that in support of the case pleaded by him, the respondent had filed his affidavit whereas on behalf of the appellant, counter affidavit of one Mr. Shakeel Ahmed who was Sub Divisional Engineer(Legal) was filed. As far as documentary evidence is concerned, the respondent had produced as many as seven documents for consideration of the Tribunal whereas the appellant had not produced any document on record at all. Thus, in view of the evidence adduced by the respondent, the Tribunal has come to the conclusion that he had continuously worked for more than four years. Therefore, the plea that post was abolished and the respondent was not entitled to reinstatement, cannot be accepted.

The contention of the learned counsel for the appellant that in view of the decision in U.P. State Road Transport Corporation Vs. Man Singh, (2206) 7 SCC 752, the Tribunal should not have directed reinstatement of the workman in service but should have directed the appellant to pay compensation, cannot be accepted. In the said case, the service was terminated within a short period whereas in the instant case, the respondent had put in service of about four years. Under the circumstances, his services could not have been terminated without following the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947.

On the facts and in the circumstances of the case, this Court is of the opinion that the principle laid down in U.P. State Road Transport Corporation (Supra) is not applicable to the facts of the instant case and the award is not liable to be set aside on that ground.

On appreciation of evidence, the learned Single Judge has come to the conclusion that the Tribunal was justified in directing the reinstatement of the respondent in service with 50% back wages. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that no case is made out by the appellant to

interfere with the same in the instant appeal. The appeal therefore which lacks merit deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],ACTG.CJ.

Praveen